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July 7, 2006

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VIA ECFS

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

**Re: MB Docket No. 03-15
KTXS-TV and KTXS-DT, Sweetwater, Texas, Facility ID No. 308
FCC File Nos. BPCDT-19991027ABO *et al.*
Request for Waiver of the July 1, 2006 Interference Protection Deadline**

Dear Ms. Dortch:

Pursuant to the Media Bureau's Public Notice issued on June 14, 2006, 1/ BlueStone License Holdings Inc. ("BlueStone"), licensee of KTXS-TV, channel 12, and KTXS-DT, channel 20, both Sweetwater, Texas, (collectively, "KTXS" or the "Station"), by its attorneys, hereby requests a waiver from compliance by KTXS-DT with the July 1, 2006 replication and maximization requirements established in the *Second DTV Periodic Review Report and Order*. 2/

1/ *DTV Channel Election Issues – Compliance with the July 1, 2006 Replication/Maximization Interference Protection Deadline; Stations Seeking Extension of the Deadline*, Public Notice, DA-06-1255 (Med. Bur. rel. June 14, 2006) (the "Public Notice"). This letter request is timely filed pursuant to a second Public Notice issued by the Bureau extending the time for filing. *See DTV Channel Election Issues – Media Bureau Extends Filing Deadline for Compliance with the July 1, 2006 Replication/Maximization Interference Protection Deadline to July 7, 2006*, Public Notice, DA 06-1372 (Med. Bur. rel. June 29, 2006) (extending replication/maximization interference protection deadline to July 7, 2006).

2/ *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television*, 19 FCC Rcd 18279 (2004) ("*Second DTV Periodic Review Report and Order*" or "*Order*").

Specifically, BlueStone requests a limited exemption from the *Order*'s "use-it-or-lose-it" mandate stipulating construction of digital television facilities meeting the requirements outlined in paragraph 78 of the *Order* ("para. 78 facilities"). ^{3/} Notwithstanding the uncertainties regarding its ultimate digital channel designation described below, KTXS-DT currently serves 78 percent of the viewers encompassed within the April 1997 Grade B service area of KTXS-TV (as adjusted for the 2000 Census) upon which KTXS-DT's replication coverage is based. BlueStone submits that grant of a waiver to permit a *de minimis* shortfall from the applicable para. 78 facilities would not impede the digital transition in the Station's Abilene-Sweetwater market.

KTXS is the ABC Network affiliate serving the small Abilene-Sweetwater, TX Designated Market Area ("DMA") – the 164th largest DMA according to Nielsen Media Research. Circumstances beyond the Station's control have led to uncertainty regarding the channel designation for KTXS-DT, and have prevented the Station from investing additional capital and resources in its current digital facility until this channel issue is resolved. BlueStone currently has pending before the Commission a Request for Waiver of the 0.1 Percent Interference Limitation. In the absence of a decision on that prior waiver request, the Station cannot be certain about the post-transition digital channel assignment for KTXS-DT. As a result, KTXS-DT cannot achieve the 80 percent "use-it-or-lose-it" coverage standard on its assigned DTV channel 20 without taking unduly expensive and ultimately uneconomic measures to upgrade what may be a temporary facility, depending on the outcome of that earlier waiver proceeding. Moreover, with current facilities and power, KTXS-DT's signal on channel 20 reaches approximately 78 percent of the population covered by the analog signal of KTXS-TV on channel 12 – a mere 2 percent shy of qualifying as para. 78 facilities for licensees that receive a tentative channel designation on a channel that is not their current DTV channel.

Due to reasons such as the limitations and added expense of digital operations on channel 20 in this market, BlueStone intends to relinquish KTXS-DT's assigned digital channel and migrate its digital operations to KTXS-TV's current analog channel 12 at the end of the transition. *See* FCC File No. BFRECT-20050815AIN (Form 382). The Media Bureau disapproved KTXS's first-round channel election based on theoretical interference predicted to affect 0.8 percent of the service area population for KLST-DT operations on channel 11 in the neighboring San Angelo, Texas DMA. *See* Letter from Clay C. Pendarvis, Associate Chief, Video Division, Media Bureau, dated June 7, 2005 (the "June 7 letter"). Because of the *de minimis* nature of the predicted interference and the desirability of continuing KTXS-DT operations after the transition on current KTXS-TV NTSC channel 12, BlueStone sought a waiver of the Commission's 0.1 percent interference limitation in a request filed in this docket on August 15, 2005, and supplemented that filing with additional information on February 21, 2006. (Copies of those submissions are attached hereto as Attachment 1.)

As explained in BlueStone's pending waiver request, the Commission's analysis shows that the predicted, *de minimis* interference to the signal of KLST-DT would affect no viewers in that other station's home San Angelo DMA. BlueStone's filings also demonstrated that the

^{3/} *Id.*, 19 FCC Rcd at 18314-15, para. 78.

Commission adopted the *ad hoc* 0.1 interference policy in the *Second DTV Periodic Review Report and Order* without any reasoned analysis or empirical justification for this previously unknown standard. For all of these reasons, the public interest would be served by grant of a limited exemption to the “use-it-or-lose-it” benchmark, so that KTXS-DT may retain and carry over its current interference protection to its full, authorized service area following the digital transition. At minimum, KTXS-DT should be granted a waiver of the July 1, 2006 replication deadline until the Commission acts upon the Station’s pending interference limitation waiver request.

In the Public Notice, the Media Bureau provided detailed instructions for waiver requests to be filed by stations in KTXS-DT’s situation. Licensees that are close to meeting the requirements specified in paragraph 78 of the *Order* may request a waiver of those requirements by addressing five specific factors. ^{4/} As this request for waiver explains, KTXS-DT’s current facilities already approximate the 80 percent replication requirement that would be applicable if its interference limitation waiver request is granted; particularly given the pendency of that request, the extraordinary expense that would be required to upgrade a temporary digital facility on channel 20 cannot be justified in light of the benefit from reaching a handful of additional viewers. Therefore, if the audience now served by the analog operation of KTXS-TV is to be provided with an interference-free digital signal at the end of the transition, the extent of protection should not be based solely on the current operation of KTXS-DT on channel 20.

As the Commission explained in its *Sixth Report and Order* in the Advanced Television Systems docket, its goal in developing the digital Table of Allotments was to “ensure that broadcasters have the ability to reach the audiences that they now serve and that viewers have access to the stations that they can now receive over-the-air.” ^{5/} The *Second DTV Periodic Review Report and Order* requires all commercial stations that receive a tentative DTV channel designation on a channel other their current DTV channel, and that are either located outside the top 100 markets or are not affiliated with a top-four network, to serve at least 80 percent of the number of viewers served by such station’s analog facilities as of 1997. ^{6/} Stations that come close to meeting this benchmark, but that cannot completely achieve on their current digital channel the requisite percentage of the population coverage on their NTSC channel, may submit a request for waiver of the interference protection deadline. The Media Bureau suggested in the Public Notice that such requests for waiver should address five factors:

- (1) how close to full replication/maximization the licensee will be as of the deadline; (2) the reason the licensee is unable to comply fully; (3) the cost

^{4/} Public Notice at 5.

^{5/} *Advanced Television Systems and their Impact Upon the Existing Television Broadcast Service*, Sixth Report and Order, 12 FCC Rcd 14588, 14605, para. 29 (1997) (“*Sixth Report and Order*”).

^{6/} Public Notice at 1-2 (citing *Second DTV Periodic Review Report and Order*, 19 FCC Rcd at 18314-15, para. 78).

to the licensee and the impact on viewers if the licensee were required to comply fully; (4) whether the licensee will be able to modify its operation to comply fully after analog operation terminates (*e.g.*, relocate its DTV antenna to the top of the tower); and (5) any other relevant factors. ^{7/}

Each of these topics is addressed in turn below.

(1) Present Coverage. KTXS-DT's current operation on channel 20 achieves 78 percent coverage of the interference-free service population of the KTXS-TV analog facilities on channel 12. On information and belief, BlueStone respectfully submits – based on Station management's knowledge of the DMA – that a 2 percent increase in the present service population for KTXS-DT would yield a negligible increase in the number of viewers who would receive the signal.

(2) Difficulties of Full Compliance. The limitations on KTXS-DT's operation on channel 20 are the product of circumstances beyond the Stations' control, namely, the need for resolution of the 0.1 percent interference limitation waiver request described above. Strict adherence to the "use-it-or-lose-it" standard in this instance, when KTXS-DT is awaiting a decision on that earlier waiver request and is already within two percentage points of meeting the 80 percent replication requirement with its digital facility on channel 20, would be contrary to the public interest and to the Commission's goals for the digital transition. KTXS should not be penalized by losing interference protection, and a significant fraction of its viewers should not be put at risk of losing their local ABC network service following the transition, as a result of the uncertainty regarding the channel designated for KTXS-DT digital operations after the end of the transition period. This unusual situation clearly qualifies as a circumstance beyond the Station's control.

In the *Second DTV Periodic Review Report and Order*, the Commission concluded that a licensee assigned an out-of-core digital channel should be allowed to "flash cut" to digital operation on its current in-core analog channel without losing interference protection for its ultimate in-core digital channel. ^{8/} In adopting this approach for out-of-core assignments, the Commission recognized both the inefficiency and inherent unfairness of requiring a licensee to construct to full facilities on a channel that ultimately is unsuitable for DTV operations. Both from a policy standpoint and as a practical matter, an analogous approach is warranted here. The continuing uncertainty regarding KTXS's assigned digital channel and tentative channel designation makes it difficult to justify the expense that would be necessary to achieve the 80 percent "use-it-or-lose it" replication requirement on channel 20. Yet, KTXS-DT already serves 78 percent of the viewers served by the 1997 facility used to determine the Station's replication coverage. Given the cost of operation and relative ineffectiveness of channel 20 for post-transition use by KTXS-DT, BlueStone elected to return that spectrum at the end of the transition. Attempting now to make up a *de minimis* difference in population served prior to

^{7/} *Id.* at 5.

^{8/} *Second DTV Periodic Review Report and Order*, 19 FCC Rcd at 18319-23, paras. 89-97.

resolution of the pending interference limitation waiver request would be inordinately costly and could result in precisely the type of “undue ‘stranded investment’” that the Commission wishes to avoid imposing on licensees. ^{9/}

Contrary to the view expressed in the *Order* regarding adaptability of components, ^{10/} the additional transmitter cabinets and related equipment that BlueStone would have to deploy in order to increase KTXS-DT’s existing coverage by 2 percent would be of no use after the transition if the interference limitation waiver is granted and KTXS-DT commences permanent operations on channel 12. The UHF equipment that stations such as KTXS have typically deployed to meet the Commission’s original minimum DTV coverage requirements is neither readily convertible nor suitable for use on a VHF station.

(3) Cost to Licensee and Impact on Viewers. BlueStone estimates that the total expense for replacing its channel 20 transmitter, which would be necessary in order to raise the interference-free service population coverage for KTXS-DT’s current channel 20 facility from 78 to 80 percent, would be \$302,000. As explained in section (2) above, this expense represents a “stranded investment” because the new equipment could not be adapted for use in a digital facility on current KTXS-TV NTSC channel 12. In this case, the investment is unjustifiable considering the imminent end of the digital transition, the planned migration (pending the outcome of the interference limitation waiver request) of KTXS-DT to channel 12 at the end of the transition period, and the small number of new viewers that the signal would reach.

KTXS’s expected expenditures and operating costs for a channel 12 digital facility replicating the coverage of the current NTSC channel will be much lower than the cost of building out short-term para. 78 facilities on channel 20. In order to achieve a digital noise-limited signal strength matching that of the existing NTSC Grade B on channel 12, KTXS-DT will need approximately one-tenth of KTXS-TV’s currently-authorized NTSC power and will need to purchase a new digital transmitter at an estimated cost of \$505,000. If KTXS-DT is obligated to remain on channel 20, BlueStone estimates that the cost to build out to full power on this channel will be \$542,000. With such large sums at stake, BlueStone cannot order additional equipment or make a business decision about the facilities it should construct until the Commission acts upon the Station’s earlier 0.1 percent interference limitation waiver request and resolves the KTXS interference dispute.

(4) Post-Transition Compliance. BlueStone will be able to modify its operation to comply fully with KTXS’s replication/maximization obligations after analog operation on channel 12 terminates and KTXS-DT transitions to this channel currently used to broadcast KTXS-TV’s analog signal.

(5) Other Relevant Factors. BlueStone respectfully submits its pending request for waiver of the 0.1 percent interference limitation is the most pertinent factor in this request for

^{9/} *Id.* at 18316, para. 82.

^{10/} *Id.*

waiver of the July 1, 2006 replication deadline – precisely because it would be unreasonable to subject KTXS-DT to a final build-out standard that may be obviated if the request is granted. Throughout the digital transition, the Commission has been cognizant of the economic burdens that the Congressionally mandated transition places on broadcasters. In approving changes to the DTV Table of Allotments to facilitate the collocation of digital and analog facilities, the Commission has taken into consideration a station's ability to reduce its capital outlays and operating expenses. ^{11/} Grant of a waiver here would be consistent with the Commission's stated desire "[t]o allow stations to minimize the cost of this phase of the DTV transition whenever possible." ^{12/}

Moreover, the Commission consistently has recognized the need for flexibility in the enforcement of digital transition deadlines. BlueStone believes a similar approach is warranted here. Preserving full interference protection for KTXS-DT at least during the pendency of the interference limitation waiver will ensure that viewers in the rural Abilene-Sweetwater DMA will enjoy the benefits of receiving ABC network digital and high definition programming following the end of the DTV transition. It would be contrary to the underlying objectives of the transition to compromise the future operation of KTXS-DT – and thereby diminish, rather than facilitate, the availability of digital broadcast service to the public – by the rote application of the July 1, 2006 build-out requirement, especially in a situation in which Commission action is necessary before the Station can make further investment decisions. Grant of the requested relief will serve the public interest and fulfill the Commission's objective of ensuring that, following the transition, KTXS's viewers will have access to the stations that they can now receive over-the-air.

Accordingly, for the reasons stated herein and in its pending request for waiver of the 0.1 percent interference limitation, BlueStone respectfully submits that KTXS-DT should be permitted to continue operations on channel 20 at its current power level for the remainder of the transition period, and then to migrate its digital operation to its full, authorized facilities on KTXS-TV's current NTSC channel 12 at the end of the transition. The Station also should be allowed to maintain KTXS-DT's post-transition interference protection to the full extent of KTXS-TV's existing interference-free Grade B contour.

^{11/} See *Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Albany, New York)*, Report and Order, 19 FCC Rcd 4329 (2004) (amending DTV Table of Allotments where the reallocation request reflected a "reasonable business judgment" and was an "efficient step" to expedite the delivery of DTV services); see also *Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Nampa, Idaho)*, Report and Order, 19 FCC Rcd 4491 (2004) (amending DTV Table of Allotments where the requested reallocation could result in "significant savings" for the station).

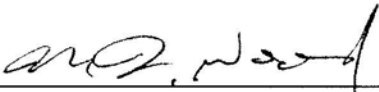
^{12/} *Second DTV Periodic Review Report and Order*, 19 FCC Rcd at 18298-99, para. 46.

The Secretary
July 7, 2006
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Please direct any questions regarding this submission to the undersigned.

Respectfully submitted,

BlueStone License Holdings Inc.

By: 

Mace J. Rosenstein
Matthew F. Wood

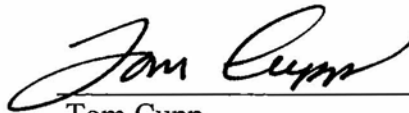
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Its Attorneys

cc: Shaun Maher, Media Bureau

DECLARATION AND VERIFICATION OF TOM CUPP

I, Tom Cupp, Engineering Manager and Chief Engineer of BlueStone License Holdings Inc., the licensee of KTXS-TV and KTXS-DT, both Sweetwater, Texas, declare that I have read the foregoing Request for Waiver of the July 1, 2006 Interference Protection Deadline and verify under penalty of perjury that the facts set forth therein are true and correct to the best of my knowledge and belief.

A handwritten signature in black ink, appearing to read "Tom Cupp", written over a horizontal line.

Tom Cupp
Engineering Manager and Chief Engineer
BlueStone License Holdings Inc.
101 Lee Street
Bristol, VA 24201
Tel: (276) 645-1516
Fax: (276) 645-1519

July 7, 2006

Attachment 1

KTXS-DT Supplement to Request for Waiver of the 0.1 Percent Interference Limitation and Prior Pleadings

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February 21, 2006

BY ECFS

Marlene H. Dortch, Esq.
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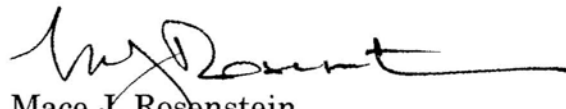
**Re: MB Docket No. 03-15
KTXS-DT, Sweetwater, Texas (Facility ID No. 308)
FCC File No. BFRCT-20050815ADI
Supplement to Request for Waiver of the 0.1 Percent
Interference Limitation**

Dear Ms. Dortch:

On behalf of BlueStone License Holdings Inc. ("BlueStone"), permittee of station KTXS-DT, Sweetwater, Texas (the "Station"), we enclose herewith a supplement to BlueStone's pending Request for Waiver of the 0.1 Percent Interference Limitation in connection with its digital channel election for the Station.

Any questions about this submission should be directed to undersigned counsel for BlueStone.

Respectfully submitted,


Mace J. Rosenstein

Enclosures

cc (w/encl.): Shaun Maher

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of:)	
)	
BlueStone License Holdings Inc.)	MB Docket No. 03-15
KTXS-DT, Sweetwater, TX)	FCC File No. BFRCCCT-20050815ADI
Facility ID No. 308)	
)	
Request for Waiver of the 0.1 Percent)	
Interference Limitation)	

To: The Secretary
Attn: Deputy Chief, Media Bureau

**SUPPLEMENT TO REQUEST FOR WAIVER
OF THE 0.1 PERCENT INTERFERENCE LIMITATION**

BlueStone License Holdings Inc. ("BlueStone"), licensee of NTSC Station KTXS-TV and permittee of DTV Station KTXS-DT, both Sweetwater, Texas, by its attorneys, hereby submits this supplement ("Supplement") to its Pending Request for Waiver of the 0.1 Percent Interference Limitation, filed on August 15, 2005 (the "Waiver Request"). 1/

I. INTRODUCTION AND BACKGROUND

KTXS-TV, which is located in the Abilene-Sweetwater DMA, is licensed to operate on NTSC channel 12 and KTXS-DT has been assigned DTV channel 20. In its Digital Channel Election First Round Election on FCC Form 382, filed on February 9, 2005, BlueStone elected KTXS-TV's NTSC channel 12 for KTXS-DT's post-transition digital operations. *See* FCC File No. BFRECT-20050209AIN.

1/ The Waiver Request was filed as an exhibit to BlueStone's Digital Channel Election First Round Conflict Decision for KTXS-DT on FCC Form 383. *See* FCC File No. BFRCCCT-20050815ADI. Concurrently, BlueStone filed a version of the request in letter form in MB Docket No. 03-15. Copies of the Waiver Request and the concurrent letter submission are attached hereto as Attachments 1 and 2, respectively.

By letter to BlueStone dated June 7, 2005, from Clay C. Pendarvis, Associate Chief, Video Division, Media Bureau (the "June 7 Letter"), the Commission notified BlueStone of the existence of an apparent "conflict" between the post-transition digital channel elections of KTXS-DT and DTV Station KLST-DT, San Angelo, Texas (Facility ID No. 31114), licensed to Nexstar Broadcasting, Inc. KLDT-DT, which is located in the San Angelo DMA, has elected its assigned DTV channel 11 for KLST-DT's post transition digital operations. *See* FCC File No. BFRECT-20050209AQQ.

According to the Commission's analysis, KTXS-DT's proposed digital operation on its elected NTSC channel 12 is predicted to result in interference to 0.8 percent of the service area population of KLST-DT's authorized facilities on its elected DTV channel 11. Notwithstanding the *de minimis* nature of the interference to KLST-DT that theoretically would result from KTXS-DT's post-transition operation on channel 12, none of which is predicted to occur to viewers situated in KLST-DT's home San Angelo DMA, Nexstar was unwilling to enter into an agreement with BlueStone to resolve the conflict identified in the June 7 Letter.

BlueStone therefore has asked the Commission for limited relief from the 0.1 percent interference limitation that is the purported basis of the June 7 Letter and that was implemented without explanation in the *Report and Order*, "Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television," 19 FCC Rcd 18279 (2004) ("*Second Periodic Review Order*"). ^{2/} As demonstrated in the Waiver Request,

^{2/} In order to preserve its rights to its assigned in-core DTV channel 20, concurrently with the Waiver Request BlueStone filed a Digital Channel Election First Round Conflict Decision on FCC Form 383 in which BlueStone provisionally notified the Commission of its decision to change its election for final digital operation to DTV channel 20. Although the revised tentative channel designation table, released by the Commission in October 2005, indicates that KTXS-DT preliminarily has been assigned to its DTV channel 20 for post-transition operations, *see Public Notice*, "Tentative Digital Channel Designations for Stations Participating in the First

and as further demonstrated below and in the Engineering Statement of Jules Cohen, P.E., attached hereto as Attachment 3 (the “Supplemental Statement”), the actual interference to KLST-DT that would result from permanent operation of KTXS-DT on channel 12 is *de minimis* under the interference standards the Commission historically has applied in the DTV context and, indeed, under any reasonable analysis. Meanwhile, permanent operation on channel 20 would necessitate significant new capital expenditures and higher operating costs by BlueStone without providing corresponding benefits for the digital transition generally, or for viewers of either KTXS-DT or KLST-DT in particular. Accordingly, BlueStone submits that the public interest would be served by permitting it to maintain its election of KTXS-TV’s NTSC channel 12 for KTXS-DT’s post-transition digital operation.

II. GRANT OF A LIMITED WAIVER OF THE 0.1 PERCENT INTERFERENCE LIMITATION WOULD BE CONSISTENT WITH COMMISSION RULES AND PRECEDENT AND WOULD PROMOTE THE DIGITAL TRANSITION.

A. The Commission Has Discretion to Waive the 0.1 Percent Interference Limitation.

Grant of the requested waiver would be consistent with Commission rules and precedent. The Commission’s rules allow it “at any time” to waive substantive regulatory provisions for good cause. *See* 47 C.F.R. § 1.3. Indeed, it is well established that the Commission’s “discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety valve procedure for consideration of an application for exemption based on special circumstances.” *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

Round of DTV Channel Elections and Second Round Election Filing Deadline” (Oct. 4, 2005), the Waiver Request is pending.

The Commission previously has recognized the propriety of waivers in the context of the digital transition. *See, e.g., Second Periodic Review Order*, 19 FCC Rcd 18279 at 18318-19 (waivers of replication/maximization deadlines); *Memorandum Opinion and Order*, “Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television,” 16 FCC Rcd 20594, 20609 and n.65 (2001) (waivers of the enhanced principal community signal strength standard). Limited relief from the 0.1 percent interference limitation would be particularly appropriate here given the *ad hoc* nature of the restriction itself and the specific factual circumstances surrounding KTXS-DT’s proposed operation on NTSC channel 12.

In *WAIT Radio*, the Commission recognized that “a general rule deemed valid because its overall objectives are in the public interest, may not be in the ‘public interest’ if extended to an applicant who proposes a new service that will not undermine the policy” 418 F.2d at 1157. That describes the present situation precisely. First, as demonstrated below and in the Supplemental Statement, operation by KTXS-DT on channel 12 will result in only *de minimis* interference to KTLS-DT generally, and in no interference at all within KTLS-DT’s home DMA. What is more, the Commission has not provided any justification for the adoption of the 0.1 percent limitation.

B. The 0.1 Percent Interference Limitation Was Implemented Without Any Reasoned Analysis or Justification.

The June 7 Letter purports to apply an interference policy adopted in the *Second Periodic Review Order*. That order, in turn, adopted in considerable part the multi-step channel election process that had been propounded by the Association of Maximum Service Television, Inc. (“MSTV”), in a May 2004 *ex parte* presentation that included, in a footnote, the following conclusory statement:

For purposes of the election process only, interference of less than 0.1% would qualify as “no interference”; interference of 0.1% or greater would be considered interference for purposes of this procedure. 3/

For its part, the *Second Periodic Review Order* also relegated the matter of a new interference limitation to a footnote, similarly devoid of any technical analysis or policy justification:

We agree with MSTV that “protect” in this context should mean that a subsequent election may not cause interference any greater than existing interference plus no more than 0.1 percent additional reduction in service population. *See MSTV Ex Parte* at 6, n.7

19 FCC Rcd at 18298 n.97. In short, neither the MSTV *Ex Parte* Presentation nor the *Second Periodic Review Order* advances any empirical basis for the 0.1 percent interference limitation.

The absence of any justification for the adoption of the 0.1 interference limitation is particularly inappropriate because it represents a *de facto* reversion to the zero-tolerance interference standard the Commission expressly rejected several years ago. Indeed, in the *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, “Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service,” 13 FCC Rcd 7418, 7450-51 (1998) (“*Reconsideration Order*”), the Commission agreed with petitioners -- including MSTV 4/ -- that a two-percent *de minimis* standard for permissible new interference “is needed to provide flexibility for broadcasters in the implementation of DTV.” Significantly, in urging the Commission to abandon its zero-tolerance policy, MSTV argued that a two-percent *de minimis* standard was appropriate because any resulting interference would affect viewers

3/ See “Special Submission of the Association of Maximum Service Television, Inc. on the DTV Channel Election and Repacking Process,” MB Docket No. 03-15, dated May 6, 2004, at 6 n.7 (“MSTV *Ex Parte* Presentation”).

4/ See “Joint Response to Ex Parte Submissions of MSTV and ALTV, In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service,” MM Docket No. 87-268, filed December 17, 1997 (“MSTV 1997 Proposal”).

only at the outer edges of a station's Grade B contour where "service is already typically degraded and cable service has higher penetration." MSTV 1997 Proposal at 4. Ultimately, MSTV emphasized, the FCC's digital allotment methodology and procedures "recognize that we cannot exist in an interference free world." *Id.* at 7.

Nothing in the MSTV *Ex Parte* Presentation or the *Second Periodic Review Order* provides any basis for the Commission's apparent reversal of its earlier conclusion, derived after reasoned analysis, that a *de minimis* amount of new interference was an unavoidable, and acceptable, aspect of the digital transition. Television station licensees have relied on this guidance in good faith for eight years. The reversal of this conclusion, late in the digital transition, is the sort of disruption the Commission had in mind when it acknowledged that midstream process changes "raise issues of fair and consistent treatment of applicants and stations." 5/

C. Limited Relief From the 0.1 Percent Interference Limited Is Appropriate Where the Receiving Station Will Not be Adversely Affected by Any Predicted Interference, Even if it Occurs.

Although the Commission did not provide a rationale for reducing the permitted interference limitation to 0.1 percent, BlueStone believes it was not intended to, and should not, apply to KTXS-DT's election of channel 12. Certainly the limitation was not contemplated to be applied where (i) the total number of actual viewers even potentially affected by any predicted interference is *de minimis*; (ii) none of those viewers are situated in the home DMA of the station predicted to receive interference; and (iii) compliance with the limitation would require the

5/ See *Memorandum Opinion and Order on Reconsideration*, "In the Matter of Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television," 16 FCC Rcd 20594, 20616 (2001) (declining to consider a new approach to interference population analysis).

station causing the interference to incur significant additional capital and recurring costs that are unnecessary to meet the FCC's objectives in setting the limitation.

The Supplemental Statement demonstrates that the actual new interference to KLST-DT's permanent operations on channel 11 that would be caused by KTXS-DT's facilities on channel 12 is, for all practical purposes, illusory. First, *no interference is calculated to occur to any viewers situated within the San Angelo DMA*, to which KLST-DT is assigned. Instead, the entire population calculated even potentially to receive interference to KLST-DT from KTXS-DT resides in KTXS-DT's home Abilene-Sweetwater DMA. Furthermore, any predicted interference generally is concentrated in the vicinity of the KTXS-DT transmitter; even the geographic cell with the greatest number of people predicted to receive any interference is 96.5 kilometers distant from KLST-DT -- more than 2.5 times farther than KTXS-DT.

Second, even the population within the portions of the Abilene-Sweetwater DMA where it is predicted that interference may occur is *de minimis*, and any potentially affected viewers are well-served by other stations. As explained in the Supplemental Statement, out of a total of approximately 9,000 two-kilometer-by-two-kilometer cells within the KLST-DT service area, 192 cells -- all outside the KLST-DT DMA -- containing a population of 4,942, have a potential of interference to KLST-DT's channel 11 operation from other stations. KTXS-DT operating on channel 12 is calculated to be a potential interferer in 111 of these 192 cells, only 45 of which are populated. Those 45 cells contain a population of 1,817. Approximately 500 of the 1,817, more than a quarter, would have a potential for interference even if KTXS-DT did not operate on channel 12. *See Figure 1.* Furthermore, as explained in the Waiver Request, these viewers will continue to be served by five other stations in the Abilene-Sweetwater DMA.

Figure 1: Summary of Analysis of Cell Data	
(1) Approximate number of cells in the noise-limited contour of KLST-DT	9,000 cells
(a) <i>Total population in such cells</i>	<i>191,051 persons</i>
(b) <i>Total population in such cells not affected by terrain</i>	<i>166,392 persons</i>
(2) Total number of cells in the noise-limited contour of KLST-DT that are predicted to receive interference from other authorized or proposed digital stations, including KTXS-DT	192 cells
(a) <i>Total population in such cells</i>	<i>4,942 persons</i>
(3) Number of cells in the noise-limited contour of KLST-DT (i) that are predicted to receive interference from KTXS-DT and (ii) that have population*	45 cells
* A total of 111 cells in the noise-limited contour of KLST-DT are predicted to receive interference from KTXS-DT, but only 45 of such cells have any population in them.	
(a) <i>Total population in such cells</i>	<i>1,817 persons</i>
<i>Portion of such population predicted to receive a KLST-DT signal affected by interference only from KTXS-DT</i>	<i>1,330 persons</i>

Finally, also as explained in the Waiver Request, BlueStone has determined that KTXS-DT will be able to provide superior service post-transition, at lower cost, on channel 12 than on its assigned DTV channel 20. If KTXS-DT ultimately is required to use channel 20 for post-transition operation, BlueStone will be burdened with significant new capital outlays and recurring expenditures that, as explained in the Supplemental Statement and summarized above, can not reasonably be seen to be necessary to the effectuation of the digital transition in the San Angelo DMA. Specifically, BlueStone has determined that the incremental capital expense associated with the build-out of its permanent digital facilities on channel 20 instead of its elected channel 12 will be approximately \$500,000; among other things, it will be necessary to construct a new tower in order to accommodate a channel 20 digital facility because the existing KTXS-TV tower will not support a full-power digital antenna along with the current channel 12 analog antenna. BlueStone estimates, in addition, that the cost of electric service needed to

operate a permanent digital facility on channel 20 will likely exceed the estimated power cost for a channel 12 digital operation by approximately \$30,000 per year. These would be substantial commitments for any station, and they are especially onerous for a station operating in the 164th DMA.

Throughout the digital transition, the Commission has been cognizant of the economic burdens that the Congressionally-mandated transition places on broadcasters. For example, the Commission has granted waivers of construction deadlines due to “severe financial constraints.” *Second Periodic Review Order*, 19 FCC Rcd at 18318-19. As another example, in approving changes to the DTV Table of Allotments to facilitate the collocation of digital and analog facilities, the Commission has taken into consideration a station’s ability to reduce its capital outlays and operating expenses. ^{6/} Grant of a waiver here would be consistent with the Commission’s stated desire “[t]o allow stations to minimize the cost of this phase of the DTV transition whenever possible” *Second Periodic Review Order*, 19 FCC Rcd at 18298-99.

III. CONCLUSION

The Commission’s sudden and unexplained decision to revert to a zero-tolerance interference limitation is inconsistent with its long-established *de minimis* interference policy in the context of the digital television transition. Whatever the reasons for doing so, certainly the limitation was not intended to apply to a situation such as that confronting KTXS-DT, where (i) there are no viewers in KLST-DT’s DMA that are predicted to receive interference from

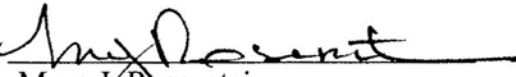
^{6/} See *Report and Order*, Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Albany, New York), 19 FCC Rcd 4329 (2004) (amending DTV Table of Allotments where the reallotment request reflected a “reasonable business judgment” and was an “efficient step” to expedite the delivery of DTV services). See also *Report and Order*, Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Nampa, Idaho), 19 FCC Rcd 4491 (2004) (amending DTV Table of Allotments where the requested reallotment could result in “significant savings” for the station).

KTXS-DT; (ii) even in KTXS-DT's home DMA the total number of viewers potentially affected by any predicted interference is *de minimis*; and (iii) compliance with the limitation would require KTXS-DT's to incur significant additional capital costs and recurring operating expenses without any corresponding practical benefit to the digital transition.

Accordingly, for all the reasons stated herein and in the Waiver Request, BlueStone respectfully requests that the Commission grant its request for limited relief from the 0.1 percent interference limitation and approve KTXS-DT's election of channel 12 for post-transition digital operations.

Respectfully submitted,

BlueStone License Holdings Inc.

By: 
Mace J. Rosenstein
Tarah S. Grant

Hogan & Hartson L.L.P.
Columbia Square
555 Thirteenth Street NW
Washington, DC 20004-1109
202-637-5600

Its Attorneys

February 21, 2006

ATTACHMENT 1

**REQUEST FOR WAIVER
OF THE 0.1 PERCENT INTERFERENCE LIMITATION**

BlueStone License Holdings Inc. ("BlueStone"), licensee of NTSC television station KTXS-TV and permittee of digital television station KTXS-DT, both Sweetwater, Texas, by its attorneys, hereby requests a waiver of the 0.1 percent interference limitation set out in the letter to BlueStone dated June 7, 2005, from Clay C. Pendarvis, Associate Chief, Video Division, Media Bureau (the "June 7 Letter"), as amplified in the *Public Notice*, "DTV Channel Election: First Round Conflict Decision Extension and Guidelines for Interference Conflict Analysis," DA 05-2233 (Aug. 2, 2005). Specifically, BlueStone requests that it be permitted to maintain its election of KTXS-TV's NTSC channel 12 for KTXS-DT's post-transition digital operation, notwithstanding the Commission's analysis indicating that KTXS-DT's authorized facilities operating on channel 12 are predicted to result in interference to 0.8 percent of the service area population of Nexstar Broadcasting, Inc.'s ("Nexstar") digital television station KLST-DT, San Angelo, Texas (Facility ID No. 31114). Alternatively, in order to preserve its rights and subject to this waiver request, in a Digital Channel Election First Round Conflict Decision on FCC Form 383 being filed concurrently herewith BlueStone has provisionally notified the Commission of its decision to change its election for final digital operation to its currently assigned in-core DTV channel 20.

KTXS-TV is licensed to operate on NTSC channel 12 and KTXS-DT has been assigned DTV channel 20. In its Digital Channel Election First Round

Election on FCC Form 382 filed on February 9, 2005 (FCC File No. BFRECT-20050209AIN), BlueStone elected KTXS-TV's NTSC channel 12 for KTXS-DT's post-transition digital operations. In its Digital Channel Election First Round Election on FCC Form 382 filed on February 9, 2005 (FCC File No. BFRECT-20050209AQQ), Nexstar elected its assigned DTV channel 11 for KLST-DT's post-transition digital operations.

In the June 7 Letter, the Commission notified BlueStone of the existence of an apparent "conflict" between the post-transition digital channel elections of KTXS-DT and KLST-DT. According to the Commission's analysis, KTXS-DT's proposed digital operation on its elected NTSC channel 12 is predicted to result in interference to 0.8 percent of the service area population of KLST-DT's authorized facilities on its elected DTV channel 11. Notwithstanding the *de minimis* extent of the interference that theoretically would result from KTXS-DT's post-transition operation on channel 12, BlueStone and Nexstar have been unable to conclude an agreement pursuant to which Nexstar would agree to accept the interference.

BlueStone submits that the public interest would be served by grant of a waiver of the 0.1 percent interference limitation. As explained in the attached Engineering Statement of Jules Cohen, P.E., the entire population calculated even potentially to receive interference to KLST-DT on channel 11 from KTXS-DT on channel 12 resides in KTXS-DT's home Abilene-Sweetwater DMA; indeed, *no interference is calculated to occur to any viewers situated within the San Angelo*

DMA, to which KLST-DT is assigned. Furthermore, even assuming that the predicted interference actually were to occur, the total interference from all stations, including the proposed KTXS-DT operation on channel 12, amounts to a population of 5,812, only 3.5 percent of the population of 166,392 not affected by terrain losses, well short of the 10 percent permitted maximum. In addition, those areas calculated to receive interference from KTXS-DT will continue to be served by the five stations in the Abilene-Sweetwater DMA.

Furthermore, in making its channel election, BlueStone determined that KTXS-DT will be able to provide superior service post-transition, at lower cost, on channel 12 than on its assigned DTV channel 20. BlueStone has determined, for example, that the incremental capital expense associated with the build-out of its permanent digital facilities on channel 20 instead of its elected channel 12 will be approximately \$500,000. Meanwhile, BlueStone estimates that the cost of power needed to operate a permanent digital facility on channel 20 will likely exceed the channel 12 digital power costs by approximately \$30,000 per year. Particularly in view of BlueStone's good-faith election of channel 12 for KTXS-DT's post transition operation, neither of these significant expenditures could reasonably have been anticipated.

Finally, BlueStone notes that an application to change the digital television allotment table substituting channel 12 for channel 20 at Sweetwater would comply with FCC rules in that no station would receive interference in excess of two percent of its population served and not affected by terrain losses. The

apparently *ad hoc* criterion of no interference in excess of 0.1 percent that has been employed in the analysis reflected in the June 7 Letter is inconsistent with the means available for predicting service and interference. The tools employed (Longley-Rice Irregular Terrain Model or any other prediction method) lack the precision to make interference determinations of as little as 0.1 percent. The criterion of two percent, as employed in the rules, is far more realistic.

Grant of the limited relief requested would promote the public interest in the wide dissemination of digital broadcast television service; at the same time, there is no basis to conclude that grant of a limited waiver would result in any harm to KLST-DT's private business interests. Accordingly, for all the reasons discussed herein, BlueStone respectfully requests that the Commission waive the 0.1 percent interference limitation and approve KTXS-DT's election of channel 12 for post-transition digital operations.

**ENGINEERING STATEMENT ON BEHALF OF
BLUESTONE LICENSE HOLDINGS INC.
KTXS-TV, SWEETWATER, TEXAS**

This engineering statement, prepared on behalf of Bluestone License Holdings Inc. ("Bluestone"), licensee of KTXS-TV, channel 12, Sweetwater, Texas, is submitted in support of the Bluestone Request for Waiver of the 0.1 Percent Interference Limitation.

In the Commission's June 7, 2005, letter relative to the First Round Channel Election Application by Bluestone proposing digital operation on channel 12, Bluestone was advised that such digital operation would cause 0.8 percent interference to elected use of channel 11 for digital operation of KLST.

An independent analysis by the undersigned confirms that interference to KLST-DT on channel 11 from KTXS-DT on channel 12 is calculated to exist. However, it was determined further that the entire population calculated to receive interference resides in the Abilene-Sweetwater DMA. One cell, straddling the Coke/Nolan County border, has calculated interference but that cell (no. 9721) contains no population. Coke County is in the San Angelo DMA. Nolan County is in the Abilene-Sweetwater DMA. Furthermore, the total interference from all other stations, including the proposed KTXS-DT operation on channel 12, amounts to a population of 5,812, only 3.5 percent of the population of 166,392 not affected by terrain losses, well short of the 10 percent permitted maximum.

Those areas calculated to receive interference from KTXS-DT are provided with coverage by the five stations in the Abilene-Sweetwater DMA.

JULES COHEN, P.E.
Consulting Engineer

Those areas calculated to receive interference from KTXS-DT are provided with coverage by the five stations in the Abilene-Sweetwater DMA.

Interference analysis results reported above were determined by use of the program known as "tv-process." In that program, the area within the predicted noise-limited contour is divided into uniform cells, and both the desired and undesired signal strengths at the center of each cell are calculated by use of the Longley-Rice Irregular Terrain Model.



Jules Cohen, P.E.

August 12, 2005



ATTACHMENT 2

HOGAN & HARTSON

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August 15, 2005

BY ECFS

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
Washington, D.C. 20554

**Re: KTXS-DT, Sweetwater, Texas (Facility ID No. 308)
Form 383 First Round Channel Election Conflict Decision
FCC File No. BFRCCCT-20050815ADI
MB Docket No. 03-15
Request for Waiver of the 0.1 Percent Interference
Limitation**

Dear Ms. Dortch:

BlueStone License Holdings Inc. ("BlueStone"), licensee of NTSC television station KTXS-TV and permittee of digital television station KTXS-DT, both Sweetwater, Texas, by its attorneys, hereby requests a waiver of the 0.1 percent interference limitation set out in the letter to BlueStone dated June 7, 2005, from Clay C. Pendarvis, Associate Chief, Video Division, Media Bureau (the "June 7 Letter"), as amplified in the *Public Notice*, "DTV Channel Election: First Round Conflict Decision Extension and Guidelines for Interference Conflict Analysis," DA 05-2233 (Aug. 2, 2005). Specifically, BlueStone requests that it be permitted to maintain its election of KTXS-TV's NTSC channel 12 for KTXS-DT's post-transition digital operation, notwithstanding the Commission's analysis indicating that KTXS-DT's authorized facilities operating on channel 12 are predicted to result in interference to 0.8 percent of the service area population of Nexstar Broadcasting, Inc.'s ("Nexstar") digital television station KLST-DT, San Angelo, Texas (Facility ID No. 31114). Alternatively, in order to preserve its rights and subject to this request, in a Digital Channel Election First Round Conflict Decision on FCC Form 383 being filed concurrently herewith BlueStone has provisionally notified the Commission of its decision to change its election for final digital operation to its currently assigned in-core DTV channel 20.

KTXS-TV is licensed to operate on NTSC channel 12 and KTXS-DT has been assigned DTV channel 20. In its Digital Channel Election First Round Election on FCC Form 382 filed on February 9, 2005 (FCC File No. BFRECT-20050209AIN), BlueStone elected KTXS-TV's NTSC channel 12 for KTXS-DT's post-transition digital operations. In its Digital Channel Election First Round Election on FCC Form 382 filed on February 9, 2005 (FCC File No. BFRECT-20050209AQQ), Nexstar elected its assigned DTV channel 11 for KLST-DT's post-transition digital operations.

In the June 7 Letter, the Commission notified BlueStone of the existence of an apparent "conflict" between the post-transition digital channel elections of KTXS-DT and KLST-DT. According to the Commission's analysis, KTXS-DT's proposed digital operation on its elected NTSC Channel 12 is predicted to result in interference to 0.8 percent of the service area population of KLST-DT's authorized facilities on its elected NTSC Channel 11. Notwithstanding the *de minimis* extent of the interference that theoretically would result from KTXS-DT's post-transition operation on Channel 12, BlueStone and Nexstar have been unable to conclude an agreement pursuant to which Nexstar would agree to accept the interference.

BlueStone submits that the public interest would be served by grant of a waiver of the 0.1 percent interference limitation. As explained in the attached Engineering Statement of Jules Cohen, P.E., the entire population calculated even potentially to receive interference to KLST-DT on channel 11 from KTXS-DT on channel 12 resides in KTXS-DT's home Abilene-Sweetwater DMA; indeed, *no interference is calculated to occur to any viewers situated within the San Angelo DMA, to which KLST-DT is assigned.* Furthermore, even assuming that the predicted interference actually were to occur, the total interference from all stations, including the proposed KTXS-DT operation on channel 12, amounts to a population of 5,812, only 3.5 percent of the population of 166,392 not affected by terrain losses, well short of the 10 percent permitted maximum. In addition, those areas calculated to receive interference from KTXS-DT will continue to be served by the five stations in the Abilene-Sweetwater DMA.

Furthermore, in making its channel election, BlueStone determined that KTXS-DT will be able to provide superior service post-transition, at lower cost, on channel 12 than on its assigned DTV channel 20. BlueStone has determined, for example, that the incremental capital expense associated with the build-out of its permanent digital facilities on channel 20 instead of its elected channel 12 will be

HOGAN & HARTSON L.L.P.

Marlene H. Dortch, Esq.

August 15, 2005

Page 3

approximately \$500,000. Meanwhile, BlueStone estimates that the cost of power needed to operate a permanent digital facility on channel 20 will exceed the channel 12 power costs by approximately \$30,000 per year. Particularly in view of BlueStone's good-faith election of channel 12 for KTXS-DT's post transition operation, neither of these significant expenditures could reasonably have been anticipated.

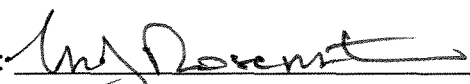
Finally, BlueStone notes that an application to change the digital television allotment table substituting channel 12 for channel 20 at Sweetwater would comply with FCC rules in that no station would receive interference in excess of two percent of its population served and not affected by terrain losses. The apparently *ad hoc* criterion of no interference in excess of 0.1 percent that has been employed in the analysis reflected in the June 7 Letter is inconsistent with the means available for predicting service and interference. The tools employed (Longley-Rice Irregular Terrain Model or any other prediction method) lack the precision to make interference determinations of as little as 0.1 percent. The criterion of two percent, as employed in the rules, is far more realistic.

Grant of the limited relief requested would promote the public interest in the wide dissemination of digital broadcast television service; at the same time, there is no basis to conclude that grant of a limited waiver would result in any harm to KLST-DT's private business interests. Accordingly, for all the reasons discussed herein, BlueStone respectfully requests that the Commission waive the 0.1 percent interference limitation and approve KTXS-DT's election of channel 12 for post-transition digital operations.

Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,

HOGAN & HARTSON L.L.P.

By: 
Mace J. Rosenstein

Attorneys for BlueStone License Holdings
Inc.

HOGAN & HARTSON L.L.P.

Marlene H. Dortch, Esq.

August 15, 2005

Page 4

cc: form383@fcc.gov

Nazifa Sawez

Shaun Maher

Elizabeth Hammond, Esq. (counsel for Nexstar Broadcasting, Inc.)

JULES COHEN, P.E.
Consulting Engineer

**ENGINEERING STATEMENT ON BEHALF OF
BLUESTONE LICENSE HOLDINGS INC.
KTXS-TV, SWEETWATER, TEXAS**

This engineering statement, prepared on behalf of Bluestone License Holdings Inc. ("Bluestone"), licensee of KTXS-TV, channel 12, Sweetwater, Texas, is submitted in support of the Bluestone Request for Waiver of the 0.1 Percent Interference Limitation.

In the Commission's June 7, 2005, letter relative to the First Round Channel Election Application by Bluestone proposing digital operation on channel 12, Bluestone was advised that such digital operation would cause 0.8 percent interference to elected use of channel 11 for digital operation of KLST.

An independent analysis by the undersigned confirms that interference to KLST-DT on channel 11 from KTXS-DT on channel 12 is calculated to exist. However, it was determined further that the entire population calculated to receive interference resides in the Abilene-Sweetwater DMA. One cell, straddling the Coke/Nolan County border, has calculated interference but that cell (no. 9721) contains no population. Coke County is in the San Angelo DMA. Nolan County is in the Abilene-Sweetwater DMA. Furthermore, the total interference from all other stations, including the proposed KTXS-DT operation on channel 12, amounts to a population of 5,812, only 3.5 percent of the population of 166,392 not affected by terrain losses, well short of the 10 percent permitted maximum.

Those areas calculated to receive interference from KTXS-DT are provided with coverage by the five stations in the Abilene-Sweetwater DMA.

JULES COHEN, P.E.
Consulting Engineer

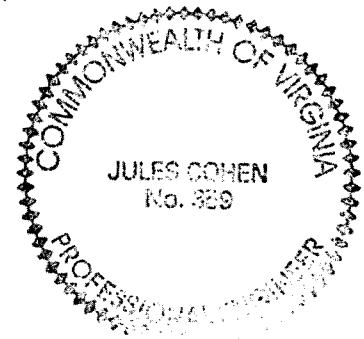
Those areas calculated to receive interference from KTXS-DT are provided with coverage by the five stations in the Abilene-Sweetwater DMA.

Interference analysis results reported above were determined by use of the program known as "tv-process." In that program, the area within the predicted noise-limited contour is divided into uniform cells, and both the desired and undesired signal strengths at the center of each cell are calculated by use of the Longley-Rice Irregular Terrain Model.



Jules Cohen, P.E.

August 12, 2005



**Federal Communications Commission**

The FCC Acknowledges Receipt of Comments From ...

BlueStone License Holdings Inc.

...and Thank You for Your Comments

Your Confirmation Number is: **'2005815493701 '**

Date Received: **Aug 15 2005**

Docket: **03-15**

Number of Files Transmitted: **1**

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ATTACHMENT 3

**ENGINEERING STATEMENT ON BEHALF OF
BLUESTONE LICENSE HOLDINGS INC.
KTXS-TV, SWEETWATER, TEXAS**

This engineering statement, prepared on behalf of Bluestone License Holdings Inc. (“Bluestone”), licensee of KTXS-TV, channel 12, Sweetwater, Texas, is submitted in support of the Bluestone Request for Waiver of the 0.1 Percent Interference Limitation.

In the Commission’s June 7, 2005, letter relative to the First Round Channel Election Application by Bluestone proposing digital operation on channel 12, Bluestone was advised that such digital operation would cause 0.8 percent interference to elected use of channel 11 for digital operation of KLST.

To provide a context for the degree of interference calculated to be caused to KLST-DT, a detailed analysis was undertaken using the FCC computer program identified as “tv-process.” The accompanying base map, tabulation of cells wherein a potential for interference exists, and the populations involved were all derived from the named program.

Nielsen Media Research maintains a Designated Market Area (DMA) Atlas defining “each television market exclusive of others, based on measured viewing patterns.”¹ Outlines of the San Angelo and Abilene-Sweetwater DMAs have been added to the base map in red and blue, respectively. As may be seen, no cell with calculated interference to KLST-DT lies wholly within the San Angelo DMA. Only a single cell with calculated interference is found on the northern border of the DMA. That cell, identified as number 9721, lies partly in Coke County, within the San Angelo DMA, and

¹ Broadcasting and Cable Yearbook 2006, pg.B-132.

partly in Nolan County, within the Abilene-Sweetwater DMA. As shown in the accompanying tabulation of cells wherein calculated interference from KTXS-DT to KLST-DT may be found, cell 9721 contains no population within its two-by-two-kilometer area. Neither KTXS-DT nor any other authorized or proposed digital television station is calculated to cause interference to KLST-DT within its home DMA.

The map produced by the tv-process program shows the location of all cells within the KLST-DT noise-limited contour calculated to receive interference from any authorized or proposed source. In addition to the proposed use of channel 12 by KTXS-DT, channel 11 operations by KSWO-DT, Lawton, Oklahoma, and KVCT-DT, Victoria, Texas, are also calculated by the computer program to have potential for interference to KLST-DT. Approximately 192 cells out of a total in excess of 9,000 cells for the entire KLST-DT noise-free area are calculated to have sufficient signal strength from other authorized or proposed digital stations to produce a potential for interference to KLST-DT.

As summed in the tabulation, the proposed operation of KTXS-DT on channel 12 is calculated to have the potential for causing interference within 111 of the 192 cells with a total population of 1,817. However, of the 111 cells only 45 have population. The remaining 66 cells have no population. KTXS-DT alone is calculated to have the potential of causing interference to only 0.8 percent of the 166,392 people not affected by terrain losses within the KLST-DT noise-limited contour. That 0.8 percent constitutes a population of about 1,330. The approximately 500 persons excess in the 45 cells is the result of other stations causing interference in the same cells. Even without KTXS-DT on channel 12, some of the cells would still show calculated potential interference to

JULES COHEN, P.E.
Consulting Engineer

KLST-DT. Particularly in the northeast quadrant of the map, the cells depicted as showing calculated potential interference to KLST-DT are in excess of the 111 cells wherein KTXS-DT is predicted to have signal strength sufficient to interfere with the predicted signal strength of KLST-DT. Taking into account all cells with potential interference to KLST-DT the population affected would be 4,942. As indicated above, digital channel 11 operations in Lawton, Oklahoma, and Victoria, Texas, as well as the proposed channel 12 operation of KTXS-DT, contribute to the number of cells depicted on the map.

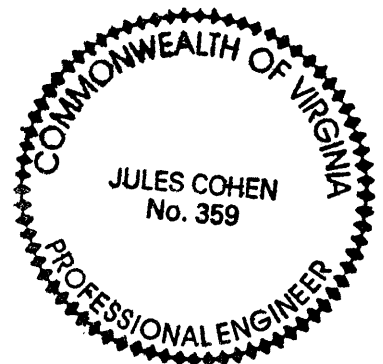
Employing the conventional basis for the conversion of television broadcasting from analog to digital, *i.e.* no single station permitted to cause in excess of two percent nor a total of ten percent interference loss at any station, the proposal by KTXS-DT on channel 12 would fully comply. The total interference loss to KLST-DT (all outside its DMA) would be only 3.0 percent if digital operations alone (4,942 people) are considered and 3.5 percent (5,812 people) during the transition period when analog as well as digital operations must be considered.

Those areas calculated to receive interference from KTXS-DT are provided with coverage by the five stations in the Abilene-Sweetwater DMA.



Jules Cohen, P.E.

February 14, 2006



JANUARY 2006

Abilene-Sweetwater
DMA

Blue-Cells with calculated
Interference to KLST-DT
(not all from KTXS-DT)
Contours shown:
Noise-Limited
City Grade

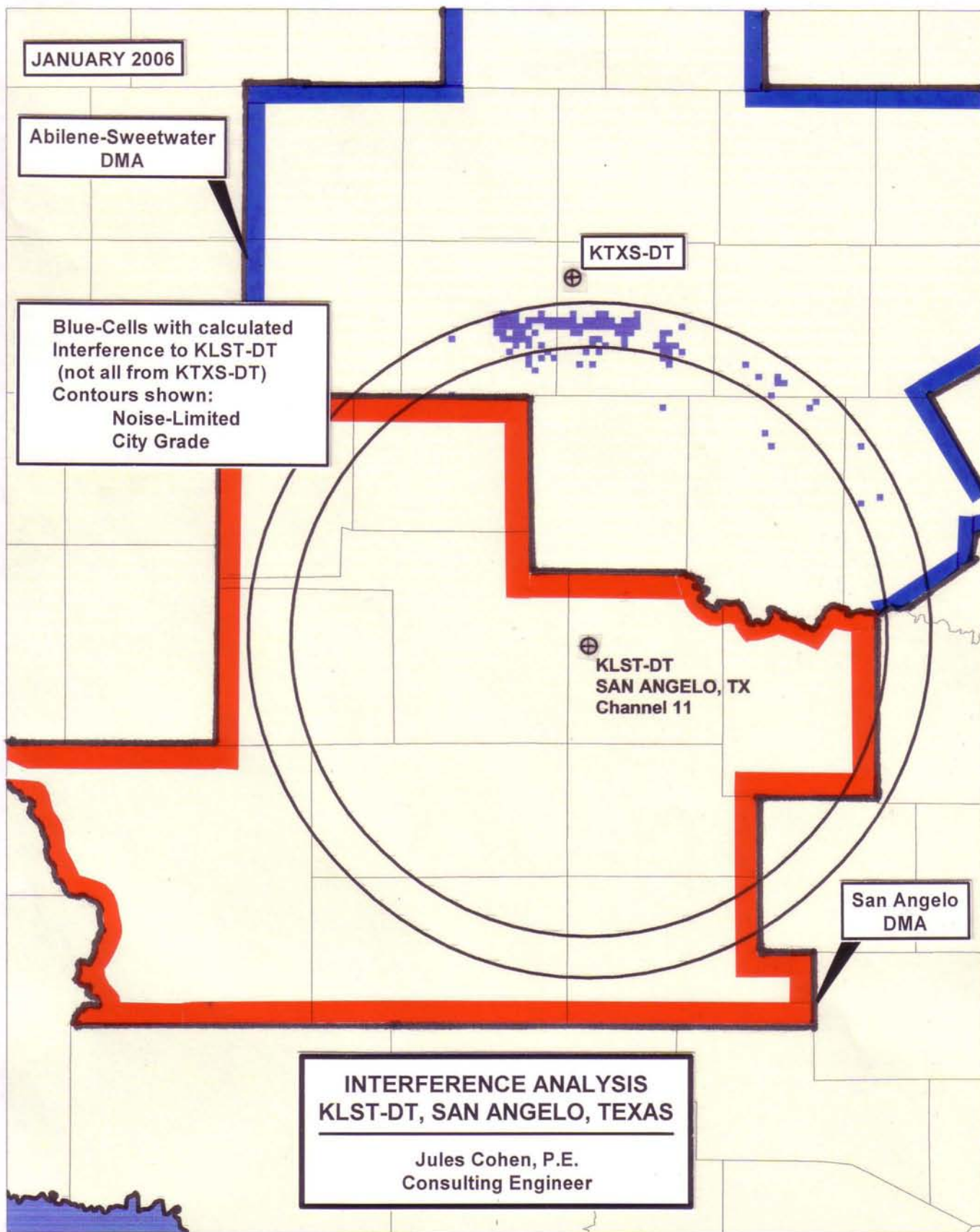
KTXS-DT

KLST-DT
SAN ANGELO, TX
Channel 11

San Angelo
DMA

**INTERFERENCE ANALYSIS
KLST-DT, SAN ANGELO, TEXAS**

Jules Cohen, P.E.
Consulting Engineer



**ANALYSIS OF CALCULATED INTERFERENCE
FROM KTXS-DT, SWEETWATER, TEXAS TO
KLST-DT, SAN ANGELO, TEXAS**

<u>Cell Number</u>	<u>Population</u>	<u>From KLST-DT</u>		<u>From KTXS-DT</u>	
		<u>Distance</u>	<u>Bearing</u>	<u>Distance</u>	<u>Bearing</u>
		(km)	(deg)	(km)	(deg)
WITHIN SAN ANGELO DMA					
9721	0	90.2	332.0	51.8	225.0
WITHIN ABILENE-SWEETWATER DMA					
10132	0	89.1	349.1	30.7	200.6
10217	15	92.7	15.9	41.3	131.1
10229	0	89.6	0.9	27.6	165.1
10231	9	90.1	358.8	26.4	171.9
10239	0	91.5	348.4	29.6	205.5
10242	0	92.9	344.8	32.6	215.0
10323	5	94.7	15.8	40.4	128.7
10324	23	94.9	14.2	37.8	130.0
10325	6	95.1	13.2	36.3	130.8
10341	2	93.2	353.3	24.3	192.3
10343	4	93.2	351.6	25.4	198.4
10345	0	93.5	348.6	27.8	207.3
10427	0	98.1	17.3	41.6	123.0
10429	85	97.1	15.1	38.3	126.1
10430	737	96.5	14.0	36.8	128.0
10431	26	96.7	13.1	35.3	128.7
10440	0	93.7	2.1	24.4	158.2
10442	11	93.7	359.2	23.0	169.1
10448	0	94.4	352.4	23.7	196.7
10454	0	96.8	345.4	29.4	219.5
10534	19	98.7	15.8	38.8	123.3
10535	29	99.1	15.1	37.6	123.3
10536	20	98.0	13.5	35.5	126.3
10537	47	97.7	12.9	34.6	127.5
10542	44	95.7	6.4	26.8	142.4
10545	0	95.8	3.2	23.5	151.8
10547	2	95.9	1.1	21.8	159.6
10555	0	96.7	351.4	22.5	203.0
10557	0	97.4	349.1	24.3	211.6

<u>Cell Number</u>	<u>Population</u>	<u>From KLST-DT</u>		<u>From KTXS-DT</u>	
		<u>Distance</u>	<u>Bearing</u>	<u>Distance</u>	<u>Bearing</u>
		(km)	(deg)	(km)	(deg)
10559	4	98.1	346.3	27.4	219.9
10642	60	100.7	13.2	34.0	122.6
10643	25	100.1	12.1	23.4	124.7
10648	43	98.0	7.0	25.9	137.3
10652	8	97.3	1.9	21.0	155.1
10653	15	96.7	0.7	20.8	160.6
10663	11	100.0	349.2	22.4	216.0
10664	9	98.8	348.0	24.6	217.1
10665	0	100.2	347.1	25.1	221.8
10666	3	100.9	346.5	25.5	224.5
10667	0	101.2	344.9	27.9	227.9
10674	0	105.7	337.6	39.3	241.7
10675	0	106.4	336.6	41.0	243.0
10748	49	103.4	13.4	33.6	117.9
10752	0	100.8	8.7	26.8	128.4
10753	103	101.3	7.6	24.9	129.7
10754	0	100.3	6.5	23.8	134.4
10755	0	100.1	5.4	22.4	137.9
10761	0	99.7	358.5	17.0	169.4
10762	0	99.7	357.4	16.7	176.1
10768	0	101.0	350.6	19.8	212.8
10770	30	102.2	348.3	22.1	223.0
10771	4	102.7	347.1	23.7	226.9
10773	0	103.1	345.2	26.5	231.2
10774	0	103.6	344.1	28.1	233.7
10781	0	108.3	337.1	40.1	245.6
10851	0	105.8	16.0	37.8	112.7
10858	0	102.8	8.6	25.6	124.9
10859	0	102.5	7.5	24.0	127.6
10860	14	102.6	6.4	22.4	130.0
10861	0	102.1	5.3	21.0	134.3
10862	0	101.9	4.2	19.6	138.3
10863	36	101.0	3.0	19.0	144.5
10864	0	101.7	1.9	17.2	148.2
10865	2	101.9	0.7	16.0	154.6
10866	0	101.6	359.7	15.5	160.8
10867	0	101.7	358.6	15.0	167.9
10868	0	101.7	357.5	14.7	175.5
10869	2	102.0	356.5	14.5	182.0
10870	0	102.0	355.2	14.9	190.9
10871	0	102.2	354.1	15.4	198.1
10872	0	102.4	353.0	16.2	204.8
10875	0	103.3	349.7	19.4	221.0
10876	0	103.7	348.7	20.8	225.1
10877	0	104.1	347.6	22.2	228.7

<u>Cell Number</u>	<u>Population</u>	<u>From KLST-DT</u>		<u>From KTXS-DT</u>	
		<u>Distance</u> (km)	<u>Bearing</u> (deg)	<u>Distance</u> (km)	<u>Bearing</u> (deg)
10878	0	104.5	346.5	23.7	231.9
10879	16	105.5	345.8	24.6	235.1
10880	0	105.6	344.4	27.0	237.1
10956	233	107.7	16.3	38.2	109.9
10958	0	107.2	14.7	35.2	111.0
10965	0	104.5	7.3	22.8	123.6
10966	0	104.3	6.3	21.2	126.6
10968	0	103.9	4.1	18.2	134.1
10969	2	103.9	3.2	17.0	137.4
10970	0	103.7	1.9	15.6	144.3
10971	0	103.7	0.8	14.5	150.7
10972	4	103.5	359.5	13.7	159.9
10974	0	103.7	357.5	12.7	174.8
10975	0	103.9	356.4	12.7	195.7
10977	1	103.6	354.1	14.1	200.4
10978	0	104.4	353.2	14.4	208.2
10979	0	104.7	352.1	15.4	214.7
10980	8	105.4	351.6	15.5	219.1
10981	0	105.3	349.9	18.0	225.2
10983	0	106.1	347.8	20.9	232.9
10984	7	105.8	346.7	23.0	234.4
10985	0	107.0	345.7	24.2	238.6
10986	0	107.5	344.7	25.9	240.9
11070	28	106.8	8.6	24.1	116.3
11075	0	105.8	2.9	15.4	133.9
11076	0	105.7	1.9	14.0	139.5
11080	8	104.9	357.2	11.6	177.3
11085	0	106.6	352.2	13.8	219.5
11086	0	106.9	351.2	15.1	225.3
11088	0	107.6	349.1	18.2	234.1
11089	0	108.0	348.1	19.8	237.5
11090	0	108.5	347.0	21.5	240.4
11091	2	105.2	345.6	24.2	241.7
11181	0	107.8	2.9	14.0	128.0
11192	3	108.3	351.0	14.6	230.4
Total	1817	(111 cells with interference)			

Note: The total number of cells within the noise-limited contour of KLST-DT, with total population of 191,051, is approximately 9,000, of which, approximately 192 cells with total population of 4,942 are calculated to have interference. Some of the 111 cells tabulated above are calculated to receive interference also from digital operations other than KTXS-DT. (The total KLST-DT population not affected by terrain is 166,392.)